



U.S. Department of Justice

National Domestic Communications Assistance Center
Executive Advisory Board



March 21, 2019

Ms. Alice Bardney-Boose
NDCAC EAB Designated Federal Officer
Federal Bureau of Investigation
Operational Technology Division
Building 27958A
Quantico, Virginia 22135

Dear Alice,

I have reviewed the minutes and hereby certify that they accurately reflect the proceedings from the December 4, 2018 National Domestic Communications Assistance Center (NDCAC) Executive Advisory Board (EAB) meeting held in Alexandria, Virginia.

Sincerely yours,

/s/ Preston Grubbs

Preston Grubbs
Assistant Administrator
Operational Support Division
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U.S. Department of Justice



National Domestic Communications Assistance Center Executive Advisory Board Meeting Minutes December 4, 2018



The Executive Advisory Board (EAB) of the National Domestic Communications Assistance Center (NDCAC) convened for its fifth meeting at 10:00 A.M. on December 4, 2018, at the Hilton Mark Center, 5000 Seminary Rd, Alexandria, VA 22311.

The meeting was called to order by the NDCAC EAB Designated Federal Officer (DFO) Alice Bardney-Boose. DFO Bardney-Boose welcomed all attendees to the NDCAC EAB meeting and provided a brief overview of meeting logistics.

Preston Grubbs, Chairman of the NDCAC EAB, provided the group an overview of the meeting agenda (see **Appendix A**) and congratulated Mr. Paul Vanderplow and Mr. Michael D'Ambrosio for receiving the Attorney General's approval on their respective Board nominations. Chairman Grubbs introduced board members (see **Appendix B**) and attendees (see **Appendix C**) and conveyed special thanks to members of the Center for Strategic and International Studies (CSIS) for their attendance at the meeting. He stated more information on digital evidence is needed and the Board is looking forward to their presentation and discussion. Chairman Grubbs stated invitations to attend the meeting were extended to Attorney General Sessions prior to his leaving office and to Acting Attorney General Whitaker after being named to the office. He mentioned the EAB's Report to the Attorney General was submitted prior to the transition. Chairman Grubbs asked if there were any remarks before turning the floor over to NDCAC Director Marybeth Paglino.

Director Paglino presented the EAB with an update of recent activities at the NDCAC. She highlighted the NDCAC's Technical Resource Group (TRG) and its ability to provide law enforcement with real-time assistance as well as information about other NDCAC services, tools, and training. Director Paglino stated the TRG saw an increase in the rate at which it was gaining clients. TRG membership since the previous EAB meeting in April 2018 had increased more quickly than in the six months prior to April. Director Paglino stated the TRG is fielding an increasing number of calls for help on obtaining and interpreting social media records.

Director Paglino continued with an update on the NDCAC website. The new website will take a "learning pathways" approach to assist users in efficiently accessing information. It will allow users to become more adept on given topics at their own pace. She stated the NDCAC will analyze how well this approach is received and utilized by clients and make any necessary adjustments through future website updates. Director Paglino highlighted the App Catalog, an essential part of the NDCAC's secure law enforcement website, where law enforcement can obtain information on popular communications applications.

Director Paglino updated the Board on tools the NDCAC provides to the law enforcement community. NDCAC's ".Social" tool is widely used by NDCAC clients to view and interpret lawfully obtained social media returns. Recently the NDCAC increased the number of services for

which the “.Social” tool can be used, effectively doubling the usefulness to law enforcement. Director Paglino stated the CASTViz tool is now more widely available to law enforcement through the NDCAC secure portal because of a continued partnership with FBI’s Cellular Survey Analysis Team (CAST). CASTViz is an analytical tool that increases law enforcements ability to understand provider location information to include cell-site information and call detail records. According to Director Paglino, there has been a significant increase in downloads of the CASTViz tool since the NDCAC included the tool on its secure portal.

Director Paglino briefed the Board on training opportunities the NDCAC provides to federal, state, and local law enforcement. NDCAC develops training that covers various topics the law enforcement community encounters. Recently, the NDCAC developed and hosted its first social media class (entitled “Utilizing Open Source and Social Media for Investigations”). This class incorporates NDCAC tools available for download through the NDCAC secure portal. In addition to developing training, NDCAC continues to work with other agencies to leverage existing training opportunities. Director Paglino informed the Board the new training contract is in place for the NDCAC Training Team and includes the ability to leverage state and local subject matter experts to conduct training.

Director Paglino discussed the new “Fifth Generation” (5G) of wireless communications technology that will likely impact law enforcement investigations. Director Paglino stated the NDCAC has been working diligently to ensure new 5G capabilities meet existing CALEA standards. Concluding her presentation, she asked the Board if anyone would be interested in learning more about 5G at the next EAB meeting. Following an overwhelmingly positive response, Director Paglino assured the Board it would receive a presentation on 5G at the next meeting.

Mr. William Carter and Ms. Jennifer Daskall presented an overview of “Low-Hanging Fruit: Evidence-Based Solutions to the Digital Evidence Challenge.” This Report, a follow on to another report, grew out of many questions regarding encryption. The Report was formulated after meetings with the civil liberties community, service providers, and federal, state, and local law enforcement. According to Ms. Daskall, the portion of the Report that stood out the most was the gap in perceptions of the issue between law enforcement and service providers. The Report recommends more resources at the federal, state, and local level to provide technical assistance and to make sure more tools and training are available. In addition, more training at the judicial level is recommended. The Report expressed the need for more help from providers to include easier portals, more staff, shorter turnaround times, specific point of contacts, and an increase in available training, and enhanced cooperation. Ms. Daskall stated some companies are in the process of addressing some of these issues.

A significant amount of attention was paid to the NDCAC in the Report. The Report contained recommendations for creating a new Digital Evidence Office within the Department of Justice (DOJ); providing more resources to the NDCAC; and legislatively authorizing the NDCAC. Ms. Daskall acknowledged that no single group can fix all encryption and compliance issues. However, there are a variety of organizations already trying to create solutions for these problems. She stated CSIS is not trying to replace the assistance currently available, but rather ensure more assistance reach a broader audience across the law enforcement community. CSIS is speaking to Congress, DOJ, and others about these issues to implement the Report’s recommendations. Thus

far, Ms. Daskall stated a company has made changes in line with the Report's recommendations. Ms. Daskall and Mr. Carter opened the floor for questions.

Why a new office needed to be created instead of using those resources to beef up the NDCAC? Ms. Daskall and Mr. Carter responded by stating there exists a need for both a new policy office as well as more support for NDCAC. There is value in centralizing policy decisions because policymaking is currently done in a piecemeal fashion. According to Ms. Daskall, part of their job was to figure out how the NDCAC fit into the bigger picture regarding encryption. Further, Ms. Daskall stated she expected any legislative action to be protracted and a Digital Evidence Office would help formulate policy without taking away from the NDCAC's primary mission of providing support to law enforcement.

Are positions at the NDCAC reimbursable to the detailees' agency? Director Paglino confirmed that is the case. Each of the component agencies currently providing staff at the NDCAC requested funding during the original budget process, but did not get it in the NDCAC Fiscal Year 2012 Appropriations, so agencies are offered reimbursement.

Did CSIS staff find sufficient coordination between the resources in the law enforcement community? Ms. Daskall stated there was some level of coordination (e.g., Fusion Centers) and the NDCAC also helps to facilitate coordination. She stated the most interesting finding was that no one has a birds-eye view on all efforts and funding streams. An important aspect to law enforcement's ability to address the issues was getting a sense of what is going on and what is working best throughout the law enforcement community. Ms. Daskall stated there is not enough sharing in curricula or tools across the community and expressed there was no single organization with a complete picture. In her view, law enforcement favored having central points of contact from which to obtain information; some providers felt this would be beneficial as well.

A member asked Mr. Carter and Ms. Daskall if the NDCAC should offer training to the providers. Ms. Daskall stated the NDCAC has the right roles and responsibilities to provide this training.

In the event a Digital Evidence Office were established, what additional functions or policy guidance would need to be provided? Ms. Daskall stated that gathering information from different streams and funding sources would need to be included in the scope of such an Office. She urged members to think strategically about the future and potential legislative debates on encryption and international coordination. According to Ms. Daskall, there are solutions being implemented outside of the United States that could be helpful.

A member asked how providers have received CSIS's report and for CSIS to describe its engagement with Congress. Ms. Daskall stated providers have been very supportive and some providers could see an increase in requests depending on their business model. Unfortunately, smaller providers will find it difficult to keep up and engage. As far as legislation, CSIS has spoken with Congressional members and staff and they show a great deal of interest and expressed no objections in principle, but were concerned about determining where fiscal resources would come from.

A member inquired about CSIS's vision of the process for centralized information and access. Ms. Daskall stated the goal is to facilitate access, because making each request go through a central point of access would be counterproductive; however, an authentication system will be necessary. The member asked if there should be a central point of approval with protocols in place. Ms. Daskall agreed if there is a way to make that effective and efficient then it would be the best option. Ms. Daskall stated this model is how CSIS views the NDCAC. State and local officers often do not know where to go and are missing out on a wealth of information. Ms. Daskall views the NDCAC as that clearinghouse and should be evaluated to better help law enforcement. She stated young people are living virtually and there is a lag in policy around this technology. NDCAC needs enhanced support to keep up with changing technology.

A member asked where providers go to get training and if NDCAC could train and certify providers. Ms. Daskall stated this question was interesting because she never thought of the possibility. The question about training is valid; however, she believes a mandate for provider training would be an uphill battle. Ms. Daskall stated European proposals call for provider training and a central point of contact.

The discussion turned to law enforcement's concerns with the process of gaining access to information from companies. The Report does a great job highlighting distrust between law enforcement and providers, but law enforcement wants to know what data is available at these companies. Ultimately, law enforcement wants more transparency. Ms. Daskall stated many things can be done without legislation, but some things are not feasible. Standardizing requests is impossible because of the way providers operate their respective back ends; formatting chain of evidence/custody procedures to be consistent across law enforcement is also difficult. Ms. Daskall stated providers are open to transparency, communication, and working with law enforcement, but cannot structure everything the same way. All providers must abide by the Electronic Communications Privacy Act, which creates some uniformity amongst providers. There is a way to facilitate changes in chain of custody and standardize methods for turning over evidence without always having a person in court to do so. There are still issues with timing and questions about what can be provided with 2703 (d) orders. The Electronic Communications Privacy Act is a great basis but there is still work to be done.

Questions continued with a member asking if industry has ever thought to allow law enforcement to tell them what is needed so they can provide it. The member stated some of the larger companies sell this information all the time. Ms. Daskall stated providers differ on this policy because they are protecting their customers' privacy rights. Most providers try to distinguish themselves based on their privacy policies; and further, are often prohibited by law from sharing certain information commercially.

A member stated they continue to see the need for a dialogue to come up with solutions. The gap and communications breakdown is clearly visible. Director Paglino shared the NDCAC's experience with several providers: once certain requirements were more thoroughly explained, providers found mechanisms to meet law enforcement's needs.

The topic of providers assisting law enforcement in interpreting data was the focus of the next question. Mr. Carter stated providers would necessarily defer from any analysis of data because of

legal reasons. A member asked if providers considered how the public would perceive any assistance to law enforcement and if that consideration shaped the interaction between providers and law enforcement. Mr. Carter confirmed that was his belief.

A member inquired of Ms. Daskall and Mr. Carter what surprised them most when conducting the research for the Report. Ms. Daskall stated that despite the divergence of worldviews of law enforcement versus provider perspectives, both generally agree on the importance of the mission of law enforcement. The range of technical sophistication across the law enforcement and provider communities should drive everyone to the same result: a feasible way to help law enforcement, facilitate provider training, and transparency in the interaction between both sides.

After the conclusion of the CSIS segment, Chairman Grubbs opined about the need for the right point of contact for agencies during investigations. He urged Board members to inform law enforcement the NDCAC is the focal point to look to when conducting investigations. A member stated the NDCAC may not always be the best answer and offered Fusion Center Conferences as a resource with extremely knowledgeable attendees. Chairman Grubbs responded by stating while he does not disagree, it is the NDCAC's responsibility to find other resources to which law enforcement may be directed. He voiced that all law enforcement should leverage the NDCAC and the NDCAC would in turn provide referrals as appropriate.

Chief Henry Stawinski assumed the floor and delivered the report of the EAB Administrative Subcommittee in Mr. Driscoll's absence. Chief Stawinski provided an update on the Report to the Attorney General. The Office of the Attorney General (OAG) advised the Board that the Report was received and appreciated. They currently have no questions or comments on the Report, but will reach out to the Board if questions arise.

Chief Stawinski discussed streamlining the document submission process. The Subcommittee determined documents handled by the Board's Designated Federal Officer (DFO) are governed by additional requirements of the FBI and the resulting document submission process is often protracted. The Subcommittee recommended all future communications with the Office of the Attorney General or Office of the Deputy Attorney General (ODAG) occur directly between the Chairman of the EAB and the Attorney General's Office. Chief Stawinski continued with a request of the Administrative Subcommittee to identify someone within the Department of Justice (DOJ) to assist the Designated Federal Officer for EAB actions requiring coordination of the Department of Justice or the Attorney General.

Chief Stawinski continued by providing an update on newly approved members of the Board. He welcomed United States Secret Service Deputy Assistant Director Michael D' Ambrosio and Bureau of Alcohol, Tobacco, Firearms and Explosives Chief of Special Operations, Paul Vanderplow. Chief Stawinski mentioned the FBI is recommending Deputy Assistant Director (DAD) Robert Bone for a position on the Board. DAD Bone will replace the current FBI member, Mr. Grigg, who has taken a new position within the FBI.

Chief Stawinski concluded with a review of the EAB Communications Plan. The Plan was developed to provide the NDCAC with a roadmap for increasing awareness in the law enforcement community through training, marketing and communications materials, and the NDCAC website.

According to Mr. Stawinski, NDCAC has complied with many recommendations proposed in the Communications Plan to include attending numerous conferences and symposiums held by national and state level district attorney's associations and major law enforcement organizations. The NDCAC uses these platforms to provide attendees with an introduction to the NDCAC and an overview of services offered to the law enforcement community. The NDCAC also presented its outreach class addressing more than 200 agencies throughout the United States. In addition, Chief Stawinski stated the NDCAC refreshed two marketing handouts to include newly available tools and new procedures for handling mobile devices during investigations.

Chairman Grubbs thanked Chief Stawinski for the Administrative Subcommittee report and stated he would contact the Attorney General's Office and ask for a point of contact within the Attorney General's Office. Chairman Grubbs will ask the Office of the Attorney General point of contact to attend future Board meetings.

Mr. Michael Sachs, Technology Subcommittee Chairman, briefed the Board on activities since the last meeting. Mr. Sachs stated he participated in the CSIS Report and explained not all state and local partners agreed with the findings. The Subcommittee and law enforcement community want to continue to see NDCAC grow, but have concerns over funding for NDCAC efforts. Members of the law enforcement community believe the CSIS Report did not push hard enough for provider transparency. Mr. Sachs stated he has reached out to members of industry since the CSIS Report was published to create an open dialogue. Law enforcement questions if a voluntary agreement can be reached between providers and law enforcement. With respect to the Board's First Report to the Attorney General, Mr. Sachs expressed it did a great job outlining the issues and the Second Report will look at proposed solutions and existing methodologies.

Mr. Sachs stated his office just came out with its 4th Annual Report on encryption where law enforcement, providers, and scholars are given the opportunity to provide input. After reviewing both reports (i.e., CSIS Report and Manhattan District Attorney's Office Report), Mr. Sachs believes legislation needs to be passed for providers to have sufficient capabilities to help law enforcement. He declared both sides want to come to an agreement but do not know how to reach one. Mr. Sachs disclosed many agencies are paying third party companies to help with retrieving information needed for investigations, while some providers are in the process of creating a solution for law enforcement. According to Mr. Sachs, law enforcement is having issues with subpoenas and timeliness in response from social media companies and providers. He questioned if this issue should be pointed out to the Attorney General. Mr. Sachs concluded by identifying the need to recommend to the Attorney General an approach that consisted of more resources for training to at least partially mitigate the issues.

Chairman Grubbs thanked Mr. Sachs for delivering the Technology Subcommittee report. He declared the report contained good ideas that should be shared with the Attorney General. He presumed the Attorney General is aware of these issues, but stated it would be reaffirming to hear these issues from the Board.

A member asked what more could be done to the NDCAC website to help law enforcement with issues they are having with providers and social media companies (e.g., a catalog of provider compliance documents). Director Paglino stated the current NDCAC secure portal has an App

Catalog that provides law enforcement with information on numerous applications. A member asked if providers look at and update their information (i.e., legal process templates) on the NDCAC secure portal. Director Paglino stated the NDCAC currently validates the efficacy of legal process templates.

The discussion continued with a question about providers directing law enforcement traffic back to the NDCAC website. Director Paglino stated telecommunications providers have referred many agencies, however, some Internet service providers have not. Another member asked if there is anything the Board can do to accelerate the Internet companies' interaction. Director Paglino stated Mr. Sachs has talked to several Internet companies, but they were not typically very responsive. Director Paglino asked the Board to pass along any Internet company contacts to Mr. Sachs, because this information could be useful to establish an introduction.

A member questioned the mobile friendliness of the NDCAC secure portal. Director Paglino stated that a mobile version has not been developed, but the secure website only requires the user to open a web browser on a mobile device.

A member asked if the NDCAC would work with attorneys on evidentiary information, to include what is available from providers. Director Paglino highlighted the App Catalog stating it shows users exactly what information is obtainable from each provider. She stated one of the goals of the "learning pathway" is to help users get to this information more efficiently. She confirmed a demonstration of the "learning pathway" approach would be given at the next Board meeting.

A member agreed the "learning pathway" approach seems to be what the Board is describing but needs to see the demonstration to understand the new approach. The member stated it might be beneficial to have the "learning pathway" start with types of evidence that can be collected instead of applications. Director Paglino stated the "learning pathway" would identify applications from which certain information can be extracted. She offered to get the member a prototype so they can see how the "learning pathway" will function. Members had a brief discussion about the development of digital evidence plans and concluded by asking the Technology Subcommittee to help the NDCAC in this regard.

Chairman Grubbs acknowledged no comments were submitted in advance of the meeting and turned the floor over to DFO Bardney-Boose.

DFO Bardney-Boose briefly discussed administrative items including possible dates for the next EAB meeting. She requested Board members notify her if April 30 or May 1, 2019 would be more convenient for the next spring meeting and if November 13 or December 3, 2019 fit better into members' schedules for the next fall meeting. Once members inform her of any conflicts, DFO Bardney-Boose stated she would move forward with scheduling both meetings.

A member initiated a discussion about resources that have been developed to help law enforcement. He stated many of these resources are generally unknown to law enforcement. The member expressed his belief the Board should identify these resources, foster a working relationship, and make them more aware of the NDCAC to facilitate resource sharing. The member asked how the Board could build a cooperative effort to share these resources with the state and

local law enforcement community. Another member responded by calling attention to many associations, task forces, agencies, and other groups outside of the NDCAC that currently share resources with the law enforcement community. The member pointed out invitations to attend the International Association of Chiefs of Police (IACP) would be coming out in the next month or two. A member stated law enforcement generally does a poor job of advertising the resources they develop. Director Paglino stated she would try to get on the IACP agenda to talk about the NDCAC.

A request was made of the NDCAC to provide the Board with executive level talking points for meetings the members attend so they can increase advocacy and awareness. Director Paglino appreciated the suggestion and stated the NDCAC would begin working on talking points for Board members.

The discussion concluded with the subject of other organizations Board members should approach to see if providers could be nudged to get together and collaborate. A member stated a Digital Evidence Task Force was recently formed and will confirm this when he meets with the IACP. A member stated that Major City Chiefs created an Intelligence Commanders Group to get like-minded individuals together. Director Paglino stated the NDCAC interacts with the Intelligence Commanders Group and has provided training to agencies within the group. Director Paglino stated the NDCAC has strategic partnerships with many organizations offering resources within the law enforcement community.

DFO Bardney-Boose asked if there were any final remarks and concluded by thanking the members for participating and adjourned the meeting. Appendices cited in these minutes are available separately.